

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AARON AGUIRRE,

Plaintiff,

v.

OFFICER D. SMITH, et al.,

Defendants.

Case No. 1:22-cv-01078-AWI-EPG (PC)

ORDER DISMISSING DEFENDANTS
FROM THIS ACTION, WITHOUT
PREJUDICE, FOR FAILURE TO SERVE
IN COMPLIANCE WITH FEDERAL
RULE OF CIVIL PROCEDURE 4(M)

ORDER DIRECTING CLERK TO CLOSE
CASE

Plaintiff filed this action on August 25, 2022. (ECF No. 1). It is now April of 2023, and Plaintiff has not served any defendants, despite the Court extending the service deadline and granting Plaintiff an opportunity to show good cause for an additional extension.

On August 25, 2022, the assigned magistrate judge issued an order setting an initial scheduling conference. (ECF No. 3). On December 7, 2022, the assigned magistrate judge converted the scheduling conference to a status conference because there was no indication that Defendants had been served and because Plaintiff failed to file a scheduling report or any other report indicating the status of the case. (ECF No. 5). The assigned magistrate judge held the status conference on December 13, 2022. (ECF No. 7). At the conference, the assigned magistrate judge extended the time to accomplish service pursuant to Federal Rule of Civil Procedure 4(m) to February 3, 2023. (ECF No. 8).

1 The extended deadline for Plaintiff to accomplish service passed, and the record did not
2 indicate that Defendants had been served with the complaint, and no defendants had appeared.
3 Accordingly, the assigned magistrate judge gave Plaintiff twenty-one days to “show cause why
4 this action should not be dismissed, without prejudice, for failure to comply with a court order,
5 failure to prosecute, and/or failure to comply with Rule 4(m).” (ECF No. 9).

6 The deadline to respond to the order to show cause has passed, and Plaintiff failed to
7 respond to the order to show cause.

8 Pursuant to Federal Rule of Civil Procedure 4(m),

9 If a defendant is not served within 90 days after the complaint is filed, the
10 court—on motion or on its own after notice to the plaintiff—must dismiss the
11 action without prejudice against that defendant or order that service be made
12 within a specified time. But if the plaintiff shows good cause for the failure, the
13 court must extend the time for service for an appropriate period.

14 Fed. R. Civ. P. 4(m).

15 The Court extended this 90-day deadline, giving Plaintiff until February 3, 2023, to
16 serve Defendants. This extended deadline has passed, and there is no indication that any
17 defendant has been served. Moreover, Plaintiff was given an opportunity to show good cause
18 for the failure to serve, but Plaintiff failed to respond to the Court’s order. Under these
19 circumstances, the court “must dismiss [this] action without prejudice.” Id.

20 **ORDER**

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Defendants are dismissed from this action, without prejudice, because of
23 Plaintiff’s failure serve Defendants within the time period prescribed by Federal
24 Rule of Civil Procedure 4(m); and
25 2. The Clerk shall CLOSE this case.

26 IT IS SO ORDERED.

27 Dated: April 10, 2023

28 

SENIOR DISTRICT JUDGE